

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

In the matter of:

SCOTT WAYNE REED (CRD # 3007033)
and SARAH REED, husband and wife,
residents of Arizona,

PEBBLEKICK, INC., a Nevada Corporation,

DON K. SHIROISHI, an unmarried resident
of California,

Respondents.

DOCKET NO. S-21132A-20-0370

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO CEASE
AND DESIST, ORDER FOR RESTITUTION,
ORDER FOR ADMINISTRATIVE
PENALTIES, ORDER OF REVOCATION AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents Scott Wayne Reed (CRD # 3007033) and Pebblekick, Inc. have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"). The Division further alleges that Scott Wayne Reed has engaged in acts, practices, and transactions that constitute violations of the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

The Division also alleges that Respondent Don K. Shiroishi is a person controlling Pebblekick, Inc. within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Pebblekick, Inc. for its violations of the antifraud provisions of the Securities Act.

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I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act and the IM Act.

II.

RESPONDENTS

2. Respondent Scott Wayne Reed ("Reed") (CRD # 3007033) is a resident of Mesa, Arizona.

3. Respondent Sarah Reed is a resident of Mesa, Arizona and has been married to Reed since 1995.

4. At all relevant times, Reed was acting for his own benefit and on behalf of and for the benefit of his and Sarah Reed's marital community.

5. Sarah Reed is joined in this action under A.R.S. § 44-2031(C).

6. Respondent Pebblekick, Inc. ("Pebblekick") is a Nevada corporation formed on August 4, 2018. Pebblekick has offices in Pasadena, California.

7. Respondent Don K. Shiroishi ("Shiroishi ") is a resident of California. Shiroishi is the Chief Executive Officer and President of Pebblekick. Shiroishi has been Pebblekick's President since at least August 2018.

8. Upon information and belief, Shiroishi is an unmarried man.

9. Reed, Pebblekick and Shiroishi may be referred to collectively as "Respondents."

III.

FACTS

Overview

10. This is an action to revoke Reed's registration as a securities salesman and license as an investment adviser representative on at least three grounds.

11. *First*, Reed failed to timely disclose four (4) liens the Internal Service recorded against him for unpaid income taxes for tax years 2008, 2009, 2013, 2014 and 2015.

12. In order to maintain his registration as a securities salesman and his license as an investment adviser representative, A.R.S. §§ 44-1948(A)(1) and 44-3159(A)(1) required Reed to timely disclose the tax liens against him. His failure to timely disclose them renders his registration and licensing applications incomplete, inaccurate or misleading.

13. Further, the four I.R.S. liens were material facts that the Securities Act's and the IM Acts' antifraud provisions required Reed to disclose to investors because they raise serious questions concerning his competence, skill, and judgment in financial matters.

14. *Second*, Reed violated a cardinal rule of the securities industry by "selling away" from his brokerage firm by offering investments it did not offer and had not approved for him to sell. Specifically, Reed sold at least \$3.5 million of investments in short-term, high-interest notes issued by Pebblekick and signed by its CEO and President, Shirioshi.

15. In one investment, Pebblekick agreed to pay the investor \$30,000 interest on a \$200,000 three-month investment. That equates to an annualized rate of return of sixty percent (60%).

16. Pebblekick paid Reed at least \$191,340 in connection with these note investments, which he concealed from his firm.

17. *Third*, when Reed's firm reported him for potentially selling away and the Securities Division requested Reed to provide information and documents concerning the allegation, Reed impeded the Division's investigation by providing responses that were false, incomplete and misleading.

The Functions of a Form U4 Application and Required Amendments

18. An individual who applies to the Commission to become registered as a securities salesman ("salesman") for a dealer or licensed as an investment adviser representative ("IAR") for an

1 investment advisory firm files a Form U4 Uniform Application For Securities Industry Registration
2 ("Form U4").

3 19. Form U4 requires an applicant to answer material questions about the applicant's
4 background and qualifications, including:

5 a) whether he has any unsatisfied judgments or liens against him;
6 b) whether he has ever voluntarily resigned after allegations were made that
7 accused him of violating investment-related statutes, regulations, rules, or industry standards of
8 conduct; and

9 c) whether he has been notified in writing that he is the subject of any investigation
10 by a state regulatory agency for potential violations of investment-related statutes or regulations.

11 20. After the Commission grants registration to a salesman, to retain that registration, the
12 Securities Act requires the salesman to file an amended Form U4 "showing changes in the facts set
13 forth in the original application for registration as supplemented or amended as such changes occur
14 or within ninety days after the change." A.R.S. § 44-1948(A)(1).

15 21. Similarly, after the Commission licenses an individual as an IAR, to retain that
16 license, the IM Act requires the IAR to file an amended Form U4 "showing any material changes in
17 the facts contained in the original application for licensure as supplemented or amended as the
18 changes occur or within thirty days after the change." A.R.S. § 44-3159(A)(1).

19 22. The Division reviews an applicant's Form U4 and amendments to it in deciding whether
20 to grant an application for registration as a salesman or for licensure as an IAR, and whether to seek to
21 suspend or revoke a salesman's registration or an IAR's license.

22 23. Securities regulators in other states make similar use of Form U4 and amendments to it
23 in deciding whether to grant an application for registration or for licensure, and whether to seek to
24 suspend or revoke a salesman's registration or an IAR's license.

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Reed's Registrations, Licensures and Undisclosed I.R.S. Liens for Unpaid Taxes

24. In July 1999, Reed first filed a Form U4 with the Commission to become registered as a securities salesman with J.P. Securities, Inc. (CRD # 36559), and the Commission granted his application.

25. In January 2001, Reed voluntarily terminated from J.P. Securities, Inc., which by then had become Ameritrade.

26. On February 14, 2001, Reed filed a Form U4 with the Commission to become registered as a securities salesman with Fidelity Brokerage Services LLC ("Fidelity") (CRD # 7784), and the Commission granted his application.

27. Reed was registered as a salesman with Fidelity from February 14 to December 31, 2001; from January 2, 2004, until December 31, 2005; and from October 12, 2007, until July 12, 2010.

28. On March 26, 2008, Reed filed a Form U4 with the Commission to become licensed as an investment adviser representative with Strategic Advisers, Inc. ("Strategic") (CRD # 104555), which was an affiliate of Fidelity. Reed's Form U4 application asked: "Do you have any unsatisfied judgments or liens against you?" Reed answered, "No," which was true at that time.

29. On April 30, 2008, the Commission granted Reed's Form U4 application to become a licensed IAR with Strategic.

30. On June 22, 2010, the Internal Review Service ("I.R.S.") recorded a Notice of Federal Tax Lien in Maricopa County, Arizona against Reed for \$46,767 in unpaid income taxes from 2008 ("the \$46,767 I.R.S. Lien").

31. Pursuant to A.R.S. §§ 44-1948 and 44-3159, Reed had a duty to file with the Commission an amended Form U4 disclosing the unsatisfied \$46,767 I.R.S. Lien against him.

32. Reed never amended his Form U4 to disclose the \$46,767 I.R.S. Lien.

33. On July 9, 2010, Reed voluntarily terminated from Fidelity and Strategic.

34. On October 18, 2010, the I.R.S. recorded a Withdrawal of its \$46,767 Lien.

1 35. On November 2, 2010, Reed filed a Form U4 with the Commission to become
2 licensed as an investment adviser representative with Ashton Thomas Private Wealth, LLC ("Ashton
3 Thomas") (CRD # 153902), and registered as a securities salesman with Meridian United Capital,
4 LLC ("Meridian") (CRD # 122924). On December 10, 2010, the Commission granted Reed's
5 applications and licensed him as an IAR with Ashton Thomas and registered him as a salesman with
6 Meridian.

7 36. On February 15, 2012, Reed voluntarily terminated from Meridian.

8 37. On February 21, 2012, Reed filed a Form U4 with the Commission to become
9 registered as a securities salesman with Accelerated Capital Group ("Accelerated") (CRD # 41270).

10 38. On March 5, 2012, the I.R.S. recorded another Notice of Federal Tax Lien in Maricopa
11 County, Arizona against Reed for \$57,075 in unpaid income taxes from 2008 and 2009 ("the \$57,075
12 I.R.S. Lien").

13 39. Pursuant to A.R.S. §§ 44-1948 and 44-3159, Reed had a duty to file with the
14 Commission an amended Form U4 disclosing the unsatisfied \$57,075 I.R.S. Lien against him.

15 40. Reed never amended his Form U4 to disclose the \$57,075 I.R.S. Lien.

16 41. On March 6, 2012, the Commission granted Reed's Form U4 application and
17 registered him as a salesman with Accelerated.

18 42. On September 12, 2012, Reed filed an amended Form U4 with Accelerated. The
19 Form U4 asked: "Do you have any unsatisfied judgments or liens against you?" Reed answered,
20 "No."

21 43. Reed's answer was false, inaccurate and misleading because the I.R.S. had recorded
22 a \$57,075 lien against him and there is no record that as of September 12, 2012, Reed had satisfied
23 it.

24 44. On May 13, 2013, the I.R.S. recorded a Withdrawal of its \$57,075 Lien.

25 45. On November 2, 2015, Reed voluntarily terminated from Accelerated.
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1 46. On November 10, 2015, Reed filed a Form U4 with the Commission to become
2 registered as a securities salesman with Coastal Equities, Inc. ("Coastal") (CRD # 23769). On
3 December 9, 2015, the Commission granted Reed's Form U4 application and registered him as a
4 salesman with Coastal.

5 47. On April 11, 2016, Reed voluntarily terminated from Ashton Thomas and Coastal
6 Equities.

7 48. Also on April 11, 2016, Reed filed a Form U4 with the Commission to become
8 licensed as an investment adviser representative and registered as a securities salesman with Wells
9 Fargo Clearing Services, LLC, dba Wells Fargo Advisors ("WFA" or "Wells Fargo") (CRD #
10 19616).

11 49. On May 13, 2016, the Commission granted Reed's Form U4 application and licensed
12 him as an IAR and registered him as a salesman with WFA.

13 50. On October 17, 2016, the I.R.S. recorded another Notice of Federal Tax Lien in
14 Maricopa County, Arizona against Reed for \$120,971 in unpaid income taxes from 2013 and 2014
15 ("the \$120,971 I.R.S. Lien").

16 51. Pursuant to A.R.S. § 44-1948(A)(1), Reed had a duty to file with the Commission an
17 amended Form U4 disclosing the unsatisfied \$120,971 I.R.S. Lien against him for unpaid income
18 taxes within ninety (90) days; and pursuant to A.R.S. § 44-3159(A)(1), Reed had a duty to file an
19 amended Form U4 within thirty (30) days. Reed did not disclose \$120,971 I.R.S. Lien within either
20 timeframe.

21 52. On February 15, 2017, Reed filed an amended Form U4 disclosing the \$120,971 I.R.S.
22 Lien. Reed wrote an explanation stating:

23
24 The notice was never received by me from the IRS. I learned about it from
25 a solicitation from a tax consultant. Approximately in December 2016, after
26 which I hired a CPA to file an amended return to resolve the issue
immediately. The amended return was filed and the issue is resolved. I am
just waiting for the IRS to complete processing of the amended return. Now

going on 3 months waiting for the IRS. Nothing I can do until they are finished and remove the lien, WHICH IS ALREADY FULFILLED.

...

The amended return was submitted in December 2016, the IRS is still "processing" the return. They have said March 15, 2017 they will be finished, at which point the lien will be removed and satisfied by the amended filing. The accountant who filed my original 2014 return did not include my business expenses at all, an oversight on their part, thus leaving me with a falsely inflated tax bill. This lien is the product of that false tax bill.

53. On July 12, 2017, the I.R.S. recorded another Notice of Federal Tax Lien in Maricopa County, Arizona against Reed for \$17,605 in unpaid income taxes from 2015 ("the \$17,605 I.R.S. Lien").

54. Pursuant to A.R.S. § 44-3159(A)(1), Reed had a duty to file an amended Form U4 disclosing the unsatisfied \$17,605 I.R.S. Lien against him for unpaid income taxes within thirty (30) days.

55. Reed did not amend his Form U4 to disclose the \$17,605 I.R.S. Lien.

56. On August 21, 2017, the I.R.S. recorded a Withdrawal of its \$17,605 Lien.

57. On August 28, 2017, Reed filed an amended Form U4 asserting that on August 11, 2017, the \$120,971 Lien "was completely removed by the I.R.S."

58. The I.R.S. did not record a Withdrawal of its \$120,971 Lien until March, 21, 2018, however.

59. Reed's four I.R.S. Liens were material facts that the Securities Act and the IM Act required Reed to disclose to the Commission and investors because they raise serious questions concerning his competence, skill, and judgment in financial matters. *See, e.g., In the Matter of BAIC, Inc. et al.*, Docket No. S-21044A-18-0071, Decision No. 77747, 2020 WL 6131585 at *27 (Ariz. Corp. Comm'n Oct. 2, 2020) ("We find that the tax liens against Respondent Smith [who was an investment adviser representative] are material facts that speak to [his] competence and judgment in financial matters."); *In the Matter of Offering of Securities By Robert Carl Martin et al.*, Docket No. S-2693-I, Decision No. 57508, 1991 WL 333867 at *6 (Ariz. Corp. Comm'n Aug. 2, 1991)

(respondents violated § 44-1991 by failing to disclose one respondent's "previous tax liens" to investors).

A Cardinal Rule Of The Securities Industry Prohibits "Selling Away."

60. With limited exceptions not applicable here,¹ securities salesmen in Arizona are registered through the Commission and as registered representatives of securities firms that are members of the Financial Industry Regulatory Authority ("FINRA").

61. A cardinal rule of the securities industry prohibits a salesman from "selling away" from his firm by offering investments that his firm does not offer or that his firm has not otherwise approved for him to sell. FINRA Rule 3280 provides in relevant part:

No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule.

Prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction....

If the member approves a person's participation in a transaction ..., the transaction shall be recorded on the books and records of the member and the member shall supervise the person's participation in the transaction as if the transaction were executed on behalf of the member.

If the member disapproves a person's participation ..., the person shall not participate in the transaction in any manner, directly or indirectly.

62. FINRA Rule 3280 broadly defines a "Private securities transaction" to mean "any securities transaction outside the regular course or scope of an associated person's employment with a member [firm]...."

63. Arizona law classifies selling away as "Dishonest and Unethical Conduct" for which the Commission can revoke a securities salesman's registration. *See* A.R.S. § 44-1962(A)(10); R14-

¹ *See* A.R.S. § 44-1844; A.A.C. R14-4-148 (Transactions Effected by Canadian Dealers and Salesmen).

1 4-130(A)(17) (“[D]ishonest or unethical practices in the securities industry shall include ... [w]hile
2 registered as a salesman, effecting securities transactions which have not been recorded on the
3 records of the dealer with whom such salesman is registered at the time of the transaction.”).

4 64. The prohibitions on selling away are designed to protect investors by ensuring that all
5 of a salesman’s securities-related activities will be supervised by the firm that employs him. A firm’s
6 supervision protects investors because the firm has an obligation to investigate each security it offers
7 and to have a reasonable factual basis for recommending it for sale. *See, e.g., S.E.C. v. Dain*
8 *Rauscher, Inc.*, 254 F.3d 852, 857 (9th Cir. 2001) (“A securities professional has an obligation to
9 investigate the securities he or she offers to customers”); *University Hill Foundation v. Goldman,*
10 *Sachs & Co.*, 422 F. Supp. 879, 898 (S.D.N.Y. 1976) (“[B]roker-dealers are required to have a
11 reasonable basis for recommendations made to customers which in turn imposes an obligation to
12 conduct a reasonable investigation of the security’s issuer.”).

13 **Reed Engaged in Selling Away and Other Dishonest and Unethical Conduct**

14 65. Beginning in 2019, Reed sold away by effecting and participating in private securities
15 transactions between at least six (6) investors and Pebblekick in which the investors collectively
16 invested at least \$3.5 million in exchange for notes from Pebblekick promising to pay the investors
17 interest at annualized rates of sixty percent (60%) or more. Pebblekick authorized Reed to sell its
18 notes and paid him at least \$191,340 for doing so. Reed concealed his selling away from WFA.

19 66. Two of the investors are individuals whom this Notice will refer to as Investor One
20 and Investor Two, who were customers of Reed and WFA.

21 67. Investor One met Reed through Investor Two.

22 68. Investor One was a banking client of Wells Fargo for many years before he met Reed
23 and became an investment advisory client.

24 69. Because of Reed’s investment advisory relationship with Investor One and Investor
25 Two, he owed them fiduciary duties “of utmost good faith, and full and fair disclosure of all material
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1 facts....” *S.E.C. v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (internal
2 quotation omitted).

3 70. In January 2020, Reed proposed to Investor One that he invest by making a three-
4 month loan to a company in California, Pebblekick, for which Investor One would receive a fifteen
5 percent (15%) return. Reed represented that Pebblekick was raising money to buy movies.

6 71. Prior to Reed approaching him with the Pebblekick investment, Investor One never
7 spoke to Reed about finding short-term lending opportunities.

8 72. Reed told Investor One that the investment would be safe, and that he (Reed) and
9 Investor Two had both made similar investments with Pebblekick.

10 73. On another occasion, while he was with Investor One and a third person, Reed pulled
11 up Investor Two’s WFA account on Reed’s phone and showed Investor Two’s account balance to
12 Investor One and the third person.

13 74. Arizona law provides that it is a dishonest and unethical practice for an investment
14 adviser representative to disclose the “affairs ... or investments of a client to any 3rd party unless
15 required by law to do so or consented to by the client.” A.A.C. R14-6-203(13).

16 75. Reed’s disclosure to Investor One that Investor Two made a similar investment with
17 Pebblekick was dishonest and unethical. Reed’s disclosure of Investor Two’s account balance to
18 Investor One and the third person was dishonest and unethical.

19 76. Based on Reed’s recommendation and assurance to Investor One that the Pebblekick
20 investment was one hundred percent (100%) safe, Investor One decided to invest \$100,000.

21 77. Reed then requested that Investor One invest \$200,000. Reed told Investor One that
22 Pebblekick would pay him \$30,000 interest on the \$200,000 for three months, which is fifteen percent
23 (15%) for that period or an annualized interest rate of sixty percent (60%).

24 78. Reed offered to personally guarantee \$100,000 of the investment. On January 27,
25 2020, Reed emailed Investor One: “As a personal courtesy I am going to personally guarantee that
26 \$100,000 of your \$200,000 loan to PebbleKick will be paid back to you in full by me, should anything

1 go wrong with this loan or PebbleKick as a company in any way. Either from my cash, or other
2 assets, your \$100,000 is secured should need be.”

3 79. Reed’s guaranty persuaded Investor One to invest \$200,000.

4 80. Arizona law provides that it is a dishonest and unethical practice for an investment
5 adviser representative to “[G]uarantee[] a client that a gain, loss or other outcome will be achieved
6 as a result of the investment advice.” A.A.C. R14-6-203(12). Reed’s \$100,000 guaranty of Investor
7 One’s investment was dishonest and unethical.

8 81. In addition to being dishonest and unethical, Reed’s \$100,000 guaranty of Investor
9 One’s investment was also fraudulent because Reed did not disclose to Investor One that he already
10 owed substantial debts that would impair his ability to pay Investor One \$100,000 if Pebblekick failed
11 to repay him.

12 82. In April 2020, when Pebblekick was supposed to repay Investor One, Reed debts
13 totaled \$1,452,793. Reed had twenty-two (22) credit accounts with balances at seventeen (17)
14 different institutions, including \$62,454 of credit card debt on seven (7) cards at five (5) institutions,
15 four (4) auto loans or leases at three (3) different institutions, and eleven (11) other loans at nine (9)
16 different institutions. Reed’s debts included an outstanding mortgage balance of \$947,246 and
17 \$194,583 outstanding on a \$200,000 line of credit secured by his residence, which he purchased in
18 June 2016 for \$1,190,000. Reed’s outstanding mortgage balance and line of credit balance totaled
19 \$1,141,829.

20 83. Reed’s debt exceeding \$1.4 million was a material fact that he needed to disclose in
21 order to not mislead Investor One with respect to his \$100,000 guaranty of Investor One’s Pebblekick
22 investment.

23 84. Reed did not disclose that material fact to Investor One, however. Reed’s guaranty
24 was fraudulent within the meaning of A.R.S. §§ 44-1991(A) and 44-3241(A).

25 85. On January 28, 2020, at Reed’s direction, Investor One wired \$200,000 to Pebblekick.
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1 86. In exchange, Investor One received an instrument titled "Pebblekick Investment
2 Note" promising to pay him \$200,000 plus 15% interest by April 28, 2020.

3 87. Shirioshi signed the Investment Note as the Chief Executive Officer and President of
4 Pebblekick.

5 88. In mid-March 2020, Investor One became nervous about his Pebblekick investment
6 due to COVID-19 and the impact the virus appeared to be having on the economy.

7 89. During the week of March 16-20, 2020, Investor One contacted Reed and requested
8 his assistance in getting Investor One's money back from Pebblekick before the end of the three-
9 month term of the investment.

10 90. Reed assured Investor One he could help. Reed stated that Pebblekick's CEO was in
11 his back pocket because Reed had raised \$4 million to \$5 million for Pebblekick.

12 91. Reed told Investor One that Investor Two had invested \$1.1 million, and Pebblekick
13 had repaid Investor Two \$600,000.

14 92. Investor One questioned why Pebblekick would borrow money from him and other
15 individuals and agree to pay an annualized interest rate of sixty percent (60%). Investor One
16 expressed his concern that the investment seemed too good to be true.

17 93. Reed stated that Pebblekick just needed bridge financing until it could access a line of
18 credit coming from a bank in Shanghai, China.

19 94. Reed said he would bet that Pebblekick could repay Investor One the following week,
20 which was March 23-27, 2020. Reed suggested that Investor One only ask for half of his money
21 back and leave the other half with Pebblekick.

22 95. Investor One asked if Wells Fargo backed the Pebblekick investment. Reed
23 responded, "Hell no. Not at all. This has nothing to do with Wells."

24 96. Investor One would not have invested in Pebblekick if Reed had informed him the
25 investment had nothing to do with WFA.
26

1 97. On Monday, March 23, 2020, Investor One went to the WFA office near his home,
2 spoke to the manager about the Pebblekick investment, and sought WFA's assistance.

3 98. WFA told Investor One the Pebblekick investment was not an investment authorized
4 by WFA and Reed should not have offered this investment.

5 99. Later during the week of March 23-27, 2020, Investor One exchanged a series of text
6 messages with Reed, and with Pebblekick directly, requesting repayment of his \$200,000. In the
7 course of those communications, Reed texted Investor One that if he "went to Wells I'm fired and
8 my career is over...."

9 100. When he sold the Pebblekick investment to Investor One, Reed did not disclose that
10 by doing so he was jeopardizing his registrations, licenses and career. Investor One would not have
11 invested if he knew this information.

12 101. When Investor One learned this information, he texted to Reed, "Why did you put
13 yourself in this situation? Why did you put me and [Investor One's wife and children] in this
14 situation[?]"

15 102. In another text with Reed, Investor One wrote, "Scotty, you cannot break the rules or
16 the law with my money. You know how conservative and by the book I am." Reed responded, "I
17 didn't break any laws bro. I would never do that."

18 103. In another text with Reed, Investor One wrote: "You know Scott that if you said to
19 me hey [Investor One], I can make you \$30,000 in 3 months on your \$200,000 but it's against Wells
20 Fargo policy and if anyone finds out I did this, I will lose my job, there is absolutely 0 percent chance
21 that I [would have invested]."

22 104. On March 27, 2020, Investor One received his \$200,000 back from Pebblekick.
23 Pebblekick did not pay Investor One any interest.

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Reed Lied to His Employers and to Securities Regulators About His Selling Away and Termination from WFA.

105. After he met with WFA, Investor One met with Investor Two and told him what WFA had said, namely that the Pebblekick investment was not an investment authorized by WFA and Reed should not have offered it.

106. On March 24, 2020, Investor Two met with WFA. Investor Two stated that he had authorized Reed to wire funds to Pebblekick for investment notes.

107. Investor Two also identified Reed's involvement in other outside, non-WFA authorized investments. Investor Two provided WFA with copies of text messages in which Reed solicited and sold Investor Two the following investments: (i) \$200,000 in something Reed called "Precision Surgical," which Reed stated that Pebblekick owned; (ii) \$200,000 in what Reed called "Mako Studios (Pebblekick)"; (iii) \$200,000 in something Reed called Ascensive Creator; and (iv) \$500,000 in Ascensive Creator.

108. WFA referred the information provided by Investor One and Investor Two to the Wells Fargo Legal Department, WFA's Compliance Special Surveillance Review Group and Wells Fargo Enterprise Investigations (collectively, "the WFA Review Team").

109. On Friday, April 3, 2020, the WFA Review Team interviewed Reed.

110. During the interview, Reed falsely denied that he solicited or introduced any clients to outside investments, including investments in Pebblekick.

111. At the conclusion of the interview, the WFA Review Team informed Reed that WFA was placing him on administrative leave effective immediately given the selling away allegations against him that WFA was investigating.

112. Also on Friday, April 3, 2020, Reed spoke with Randy Sitzman, who is the Chief Operating Officer of First Financial Equity Corporation ("FFEC") (CRD # 16507). In 2018, Sitzman had met with Reed about possibly leaving WFA and joining FFEC. On April 3, 2020, Sitzman heard Reed was having a conflict with WFA and contacted him.

1 113. According to Sitzman, Reed stated: “[Reed] had a client (Investor One) who was
2 looking for short term paper that paid well. Reed told the client that he did not have what the client
3 was looking for. He (Reed) referred the client over to a firm who offered what the client was looking
4 for. The client contacted the firm and invested money with them.”

5 114. Reed’s statement to Sitzman was false because Investor One did not approach Reed
6 “looking for short term paper that paid well.” Rather, Reed approached Investor One and proposed
7 that he invest by making a three-month, high-interest loan to Pebblekick.

8 115. Reed also told Sitzman he (Reed) did not facilitate the transaction and did not receive
9 compensation for the transaction, which was false.

10 116. According to Sitzman, Reed stated that Investor One works with a person who is also
11 a client of Reed’s and who “has money in the same type of investment with the same firm.” Reed
12 did not inform Sitzman of the four other individuals to whom Reed sold Pebblekick notes.

13 117. On April 4, 2020, FFEC decided to hire Reed.

14 118. On Monday, April 6, 2020, Reed informed Sitzman he would resign from WFA and
15 join FFEC that week.

16 119. On April 7, 2020, Reed submitted a letter to WFA stating that he was resigning
17 effective immediately and transferring his business to FFEC.

18 120. On April 7, 2020, Reed and FFEC filed a Form U4 application for Reed to become
19 registered as a salesman and licensed as an IAR with FFEC.

20 121. The Form U4 Reed filed on April 7, 2020, asked: “Item 14J. Have you ever voluntarily
21 resigned, been discharged or permitted to resign after allegations were made that accused you of: (1)
22 violating investment-related statutes, regulations, rules, or industry standards of conduct?”

23 122. Reed answered, “No.” Reed’s answer was false, inaccurate and misleading because
24 when he resigned from WFA, Reed knew WFA was investigating him for violating investment-related
25 statutes, regulations, rules, or industry standards of conduct, namely the prohibitions on selling away.
26

1 123. According to Sitzman, later during the week of April 7th, FINRA requested Reed to
2 produce documents, including records from his personal checking account. At that point, Reed
3 informed Sitzman he had additional clients who invested in Pebblekick and that he received referral
4 money from Pebblekick for those clients.

5 124. Reed and FFEC did not amend his pending Form U4 application to disclose: (i) Reed
6 had resigned from WFA while WFA was investigating him for selling away; (ii) Reed had, in fact,
7 sold away to multiple clients; or (iii) he was under investigation by FINRA.

8 125. On April 14, 2020, the Commission granted Reed's Form U4 application and licensed
9 him as an IAR and registered him as a salesman with FFEC.

10 126. On April 16, 2020, WFA notified the Securities Division that WFA was investigating
11 Reed for allegedly selling away. WFA informed the Division that after WFA suspended Reed
12 pending the investigation, he resigned and joined FFEC.

13 127. After receiving this information from WFA, the Division opened an investigation of
14 Reed.

15 128. In connection with the Division's investigation, WFA provided email and text
16 messages it obtained from Investor One concerning Pebblekick, and text messages WFA obtained
17 from Investor Two concerning his investments in Pebblekick, Precision Surgical, Mako Studios and
18 Ascensive Creator.

19 129. On May 4, 2020, the Division wrote to Reed's counsel and requested that Reed
20 provide information and documents, including a detailed statement "addressing the facts and
21 circumstances that led to his termination or resignation from Wells Fargo," including "the allegations
22 that he sold away by recommending and facilitating investment opportunities not offered by Wells
23 Fargo." The Division further requested "A list of all investment opportunities not offered by Wells
24 Fargo that Mr. Reed recommended, offered or sold to any individual or entity between April 11,
25 2016, and April 7, 2020."
26

1 130. On May 18, 2020, Reed filed an amended Form U4 that changed his answer from
2 “No” to “Yes” in response to Item 14J’s question, “Have you ever voluntarily resigned, been
3 discharged or permitted to resign after allegations were made that accused you of: (1) violating
4 investment-related statutes, regulations, rules, or industry standards of conduct?”

5 131. In making this disclosure, Form U4 required Reed to state what type of product(s) he
6 was alleged to have sold that led to his termination from WFA. Form U4 gave Reed numerous
7 choices including “Promissory Note,” “Debt-Corporate” and “Debt-Asset Backed.” Form U4
8 directed Reed to “select all that apply.”

9 132. Reed did not select any of those choices to describe the Pebblekick notes he sold or
10 Investor Two’s investments in Precision Surgical, Mako Studios and Ascensio Creator.

11 133. Instead, Reed selected the box next to “No Product.” Reed’s answer was false,
12 inaccurate and misleading because the Pebblekick notes he sold were debt instruments and promissory
13 notes.

14 134. On May 22, 2020, Reed wrote a letter to the Nevada Securities Division, which had
15 written asking him to explain his termination from WFA.

16 135. Referencing the information Investor One had provided WFA, Reed falsely stated to
17 the Nevada Securities Division: “The client complaint stems from a client that requested I provide
18 him with a product or service that WFA did not offer. I told the client that I could not provide him
19 with that product or service, and made an introduction to a third party who worked with the client
20 directly to facilitate the requested transaction....” Reed also falsely stated that Investor One had
21 received interest.

22 136. Reed’s response to the Nevada Securities Division did not indicate that he had offered
23 Pebblekick investments to at least five individuals in addition to Investor One. Reed’s response did
24 not indicate that Pebblekick paid him \$191,340 for referring investors to it, which Pebblekick did.
25 Reed’s response did not indicate that when he resigned, WFA was investigating him for the
26 Pebblekick investments as well as the investments he sold Investor Two in Precision Surgical, Mako

1 Studios and Ascensive Creator. Reed's response did not mention those investments he sold away
2 from WFA.

3 137. On May 28, 2020, Reed responded through his counsel to the Division's May 4th
4 requests for information. Reed stated he referred approximately six individuals to Pebblekick, and
5 he understood some of them referred four more individuals to Pebblekick. Reed stated that he
6 believed these ten individuals collectively invested approximately \$3.5 million to \$4 million with
7 Pebblekick.

8 138. Reed further stated, "[Pebblekick] sent me payments totaling \$191,340, which I
9 understood was for referring people to them."

10 139. Reed's May 28th response falsely stated he "did not offer or sell any investment
11 opportunities not offered by Wells Fargo." That statement was false because Pebblekick's notes
12 were investments that were not offered by Wells Fargo.

13 140. In addition, whatever Investor Two's investments in Precision Surgical, Mako Studios
14 and Ascensive Creator were, they were not investments offered by Wells Fargo. Reed's response to
15 the Division did not mention the investments he sold Investor Two in Precision Surgical, Mako
16 Studios and Ascensive Creator.

17 141. The Division's May 4th letter requested "all emails, text messages, correspondence,
18 agreements or any other document(s) reflecting any communications" between Reed and individuals
19 to whom he offered or sold investments not offered by WFA about those investments.

20 142. In response, the only document Reed produced was the signature page of Investor
21 One's Pebblekick Investment Note. Reed withheld and did not produce his email to Investor One in
22 which he guaranteed \$100,000 of Investor One's investment. Reed also withheld and did not produce
23 any of his numerous text messages with Investors One and Two regarding their investments in
24 Pebblekick. Reed also withheld and did not produce any of his text messages with Investor Two
25 regarding his investments in Precision Surgical, Mako Studios or Ascensive Creator.
26

1 143. On May 29, 2020, the Division wrote to Reed's counsel and stated: "The Securities
2 Division is investigating Scott Wayne Reed for possible violations of the Arizona Securities Act and
3 Investment Management Act, and the regulations promulgated under those Acts."

4 144. Pursuant to A.R.S. §§ 44-1948(A)(1) and 44-3159(A)(1), Reed had a duty to file an
5 amended Form U4 disclosing that the Securities Division was investigating him for possible
6 violations of Arizona's securities laws.

7 145. Although the Division knew it was investigating him, Reed was required to notify the
8 other jurisdictions where he is registered or licensed – Nevada, California, Idaho, Kansas and Utah
9 – by amending his Form U4 to disclose that Arizona was investigating him.

10 146. Reed never supplemented or amended his Form U4 to disclose that the Division was
11 investigating him for potential violations of the Securities Act and IM Act.

12 147. On October 20, 2020, Reed filed an amended Form U4 to disclose his dba, "Reed
13 Private Wealth."

14 148. In his October 20th Form U4, Reed again falsely represented that his termination from
15 WFA involved "No Product."

16 149. Reed's October 20th Form U4 also asked whether he has been notified in writing that
17 he is the subject of any investigation by a state regulatory agency for potential violations of investment-
18 related statutes or regulations.

19 150. Reed answered, "No." Reed's answer was false, inaccurate and misleading because
20 the Division's letter dated May 29, 2020, notified Reed that the Division was investigating him for
21 possible violations of the Securities Act and the IM Act, and the regulations promulgated under those
22 Acts.

23 ////

24 ////

25 ////

26 ////

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

151. From on or about mid-2019, Reed and Pebblekick made, participated in or induced the offer and sale of securities in the form of Pebblekick notes, debentures or evidences of indebtedness within or from Arizona.

152. The Pebblekick notes, debentures or evidences of indebtedness were securities within the meaning of A.R.S. § 44-1801.

153. In addition, the investments Reed sold Investor Two in Precision Surgical, Mako Studios and Ascensive Creator were notes, debentures or evidences of indebtedness, and therefore securities within the meaning of A.R.S. § 44-1801.

154. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

155. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

156. Reed and Pebblekick made, participated in or induced the unlawful sales or purchases of securities in violation of A.R.S. § 44-1991. Specifically, in connection with the offer or sale of securities within or from Arizona, Reed and Pebblekick directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors.

157. The conduct by Reed and Pebblekick includes, but is not limited to, the following:

a) Reed's failure to disclose the four Liens the I.R.S. recorded against him for unpaid income taxes in 2009, 2009, 2013, 2014 and 2015, because a reasonable investor would want to know that the person recommending the investor purchase a security has difficulty managing his own finances well enough to pay his taxes on time;

b) Reed's statement that he was guaranteeing \$100,000 of Investor One's investment without disclosing that Reed was over \$1.4 million in debt, which would impair his ability to make good on his \$100,000 guaranty; and

c) Reed's failure to disclose to investors that Arizona law and FINRA's rules prohibited him from offering or selling the investments in Pebblekick, Precision Surgical, Mako Studios and Ascensive Creator, and that by doing so he was jeopardizing his registrations, licenses and career.

158. This conduct violates A.R.S. § 44-1991.

VI.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

159. From at least August 4, 2018, through the present, Shirioshi has been and/or held himself out as the President of Pebblekick.

160. From at least August 4, 2018, through the present, Shirioshi directly or indirectly controlled Pebblekick within the meaning of A.R.S. § 44-1999. Therefore, Shirioshi is jointly and severally liable to the same extent as Pebblekick for its violations of A.R.S. § 44-1991 from at least August 4, 2018, through the present.

VII.

REMEDIES PURSUANT TO A.R.S. § 44-1962

(Denial, Revocation, or Suspension of Registration of Salesman; Restitution, Penalties, or other Affirmative Action)

161. Reed's conduct is grounds to revoke his registration as a securities salesman with the Commission pursuant to A.R.S. § 44-1962. Specifically, Reed has:

- a) Filed applications, supplements or amendments to his registration applications that are incomplete, inaccurate and/or misleading;
- b) Committed securities fraud in violation of A.R.S. § 44-1991;
- c) Violated A.R.S. § 44-1841 by selling unregistered securities;
- d) Violated A.R.S. § 44-1948(A)(1) by failing to file supplemental statements showing material changes to the facts contained in his original applications for registration;
- e) Failed to file with the Commission documents and information required under the Securities Act or has refused to permit an examination into his affairs; and
- f) Engaged in dishonest or unethical practices in the securities industry.

162. Reed's conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-1962. Specifically, Reed has engaged in dishonest or unethical practices in the securities industry within the meaning of § 44-1962(A)(10).

VIII.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

163. Reed engaged in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which Reed, directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; (iii) misrepresented his professional qualifications with the intent that the client(s) rely on the misrepresentation; or (iv) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit. Reed's conduct includes, but is not limited to, the following:

- a) Reed's failure to disclose the four Liens the I.R.S. recorded against him for unpaid income taxes in 2009, 2009, 2013, 2014 and 2015, because a reasonable investor would want to

1 know that their investment adviser representative has difficulty managing his own finances well enough
2 to pay his taxes on time;

3 b) Reed's statement that he was guaranteeing \$100,000 of Investor One's
4 investment without disclosing that Reed was over \$1.4 million in debt, which would impair his ability
5 to make good on his \$100,000 guaranty; and

6 c) Reed's failure to disclose to investors that Arizona law and FINRA's rules
7 prohibited him from offering or selling the investments in Pebblekick, Precision Surgical, Mako Studios
8 and Ascensive Creator, and that by doing so he was jeopardizing his registrations, licenses and career.

9 164. This conduct violates A.R.S. § 44-3241.

10 IX.

11 REMEDIES PURSUANT TO A.R.S. § 44-3201

12 (Denial, Revocation, or Suspension of Investment Adviser Representative License; Restitution, 13 Penalties, or other Affirmative Action)

14 165. Reed's conduct is grounds to revoke his license as an investment adviser representative
15 with the Commission pursuant to A.R.S. § 44-3201. Specifically, revocation of Reed's license would
16 be in the public interest, and Reed has:

17 a) Filed applications, supplements or amendments to his licensure application(s)
18 that are incomplete, inaccurate and/or misleading;

19 b) Committed investment advisory fraud in violation of A.R.S. § 44-3241;

20 c) Violated A.R.S. § 44-3159(A)(1) by failing to file supplemental statements
21 showing material changes to the facts contained in his original application(s) for licensure;

22 d) Failed to file with the Commission documents and information required under
23 the IM Act or has refused to permit an examination pursuant to § 44-3132; and

24 e) Engaged in dishonest or unethical practices in the securities industry.
25
26

166. Reed's conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-3201. Specifically, Reed has engaged in dishonest or unethical practices in the securities industry within the meaning of § 44-3201(A)(13).

X.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act and IM Act, pursuant to A.R.S. §§ 44-2032, 44-3292, 44-1962 and 44-3201;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. §§ 44-2032, 44-3292, 44-1962 and 44-3201;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order Respondents to pay the state of Arizona administrative penalties of up to one thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

5. Order Respondents to pay the state of Arizona administrative penalties, pursuant to A.R.S. §§ 44-1962 and 44-3201;

6. Order the revocation or suspension of Reed's registration as a securities salesman pursuant to A.R.S. § 44-1962;

7. Order the revocation or suspension of Reed's license as an investment adviser representative pursuant to A.R.S. § 44-3201;

8. Order that Reed and Sarah Reed be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action; and

9. Order any other relief that the Commission deems appropriate.

XI.**HEARING OPPORTUNITY**

Each respondent, including Sarah Reed, may request a hearing pursuant to A.R.S. §§ 44-1972 and 44-3212, and A.A.C. R14-4-306. **If a respondent requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/securities/enforcement/procedure>.

XII.**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a respondent, including Sarah Reed, requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained

1 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
2 <http://www.azcc.gov/hearing>.

3 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
4 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
5 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
6 addressed to James D. Burgess.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the
8 original signature of the answering respondent or respondent's attorney. A statement of a lack of
9 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
10 denied shall be considered admitted.

11 When the answering respondent intends in good faith to deny only a part or a qualification of
12 an allegation, the respondent shall specify that part or qualification of the allegation and shall admit
13 the remainder. A respondent waives any affirmative defense not raised in the Answer.

14 The officer presiding over the hearing may grant relief from the requirement to file an Answer
15 for good cause shown.

16 Dated this 15th day of December, 2020.

A handwritten signature in blue ink, appearing to read 'Mark Dinell', is written over a horizontal line.

17
18
19 Mark Dinell
Director of Securities